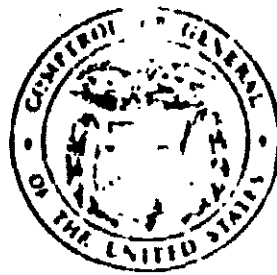


1.17931

21295

Nordell
Pace

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205570

DATE: March 25, 1982

MATTER OF: Centurion Films, Inc.

DIGEST:

1. All companies placed on Qualified Film or Videotape Producers List pursuant to Office of Federal Procurement Policy's Uniform Procurement System for Acquiring Audiovisual Productions are not essentially equal concerning technical capability. List does not rank companies and is to be used as source of minimally acceptable companies whose proposals must be evaluated based on specific criteria set forth in RFP.
2. Where record indicates that evaluation of proposals was in accordance with established criteria set forth in solicitation and was based on reasoned judgment, protest based on offeror's disagreement with evaluation is denied because determination of relative merits of proposals is responsibility of procuring agency and will not be disturbed unless shown to be arbitrary or contrary to statutes or regulations.
3. Award may be made without discussions where it can be clearly demonstrated from the existence of adequate competition that acceptance of the most favorable initial proposals without discussions would result in a fair and reasonable price, provided that the solicitation advises offerors of the possibility that award might be made without discussions.
4. Protester's contention that RFP failed to advise offerors of relative importance of price to other factors raised after the closing date for receipt of proposals is untimely under subsection 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 21 (1981), since the alleged impropriety was apparent prior to that date.

Centurion Films, Inc. (Centurion), protests the award of two contracts to Franklin Clay Films (Franklin) under requests for proposals (RFP) Nos. DAVA02-81-R-0013 (RFP-0013) and DAVA02-81-R-0008 (RFP-0008) issued by the Defense Audiovisual Agency (DAVA), pursuant to the Office of Federal Procurement Policy's (OFPP) Uniform Procurement System for Acquiring Audiovisual Productions (System). OFPP Pamphlet No. 3, September 1980. RFP-0013 solicited production of three films depicting job and rank ratings in the United States Navy. RFP-0008 solicited production of a recruiting film designed to inform men and women of Hispanic ethnic background of the career opportunities in the Navy.

For the reasons that follow, we deny in part and dismiss in part the protest.

It is Centurion's position that DAVA did not fairly evaluate the proposals received under each RFP. Centurion submits that the significant difference between its price and Franklin's price, in light of Centurion's belief that both companies are equal in most other respects, indicates that there was no rational basis for the awards. Centurion contends that since both Franklin and Centurion are on the Qualified Film Producers List (QFPL), there should be more of an emphasis on price. In other words, those companies on the QFPL are essentially equal. We will address this latter issue first and then address Centurion's arguments concerning each RFP separately.

Under the System, the Directorate for Audiovisual Management Policy, Department of Defense, is designated as Executive Agent to establish and administer the System and as the central information source on motion picture and videotape production programs. Any firm interested in performing motion picture or videotape production work for the Government is invited to submit sample films and a statement explaining the purpose of each film, the sponsor, the contract price and/or production costs to the Interagency Audiovisual Review Board (Board). The Board, which represents approximately 20 agencies, evaluates the samples in accordance with standardized criteria. Those producers who receive 70 (the minimum acceptable level of quality) or more points out of 100 points are eligible to be placed on the QFPL. However, the document issued to each qualified

producer is not a contract for a specific product, but rather an agreement of certain general terms and conditions which will be incorporated into a contract for a specific production. The OFPP Pamphlet provides that "proposals will be evaluated on the basis of technical quality, personnel qualifications, creativity, price, and other specific factors described in the RFP."

After an agency prepares its RFP for a specific motion picture, it notifies the Executive Agent of the System, requests the names of qualified producers and sends the RFP to those producers. The names on the QFPL provide an agency with those producers who are interested in contracting with the Government and, based on the Board's evaluation of a prior production, are deemed to be minimally acceptable, e.g., received at least 70 points. The list does not rank the producers according to their qualifying scores. Therefore, it is clear that all producers on the list are not essentially equal. Rather, the procuring agency must evaluate each proposal based on the specific criteria set forth in an RFP, using the list solely as its source of producers.

RFP-0013

The proposal evaluation criteria in this RFP were:

- 1. "(1) Qualifications and relevant experience of proposed production team members. [Weighted at 40 percent].
- 2. "(2) Creativity, as demonstrated in sample production. [Weighted at 35 percent].
- 3. "(3) Technical quality of sample production. [Weighted at 25 percent]."

Each proposer was advised that award would be made to the company whose proposal offered "the Greatest Value to Government, price and other factors considered." In addition, the RFP required each proposer to submit separate business and technical proposals. The business proposal was to include, among other things, a completed Contract Pricing Proposal form, Standard Form 290. Each technical proposal was to include a

sample film, resumes for the proposed team members, a list of prior films done by the team and any experience in the subject matter.

Centurion contends that the RFP was specific in regard to certain minimum requirements, e.g., photographic shooting ratio, crew size, locations and number of days at each, cast etc., and that it strictly adhered to those requirements in preparing its proposal. Since the RFP was so definite and specific, many of the requirements would be the same for all proposers, which results in technical equality of the proposals according to Centurion. Centurion believes that the technical score of its proposal (54 points) and that of Franklin (88.4) indicate that the scores were determined arbitrarily. It is Centurion's position that the technical evaluation should have resulted in technical equality, making price the critical factor in the award of the contract. Centurion's price was \$29,541.25 and Franklin's was \$39,859. In further support of its argument that the evaluation was arbitrary, Centurion questions why under RFP-0008 it received a technical score of 76.66 when it submitted the same resumes as were submitted under RFP-0013. Moreover, Centurion posits that while the sample film submitted was different for each RFP, the films were made by the same key production personnel, implying that the creative and technical aspects of each film should be very close. Consequently, the 22.66-point difference indicates an arbitrary technical evaluation.

Also, Centurion compares its technical proposal to Franklin's technical proposal, noting that it was not given a complete copy of Franklin's proposal. Specifically, in regard to the production team, the directors and cameramen for each company are equally qualified and Franklin's cameraman is listed as Centurion's alternate cameraman. With respect to the sample films, Centurion submits that it is not possible to compare the films since Centurion has not seen Franklin's film. However, after Centurion describes the film it submitted, including the film's background, and the several films it produced for the Air Force, Centurion states that it believes its film "would match up in technical and creative respects" to that of Franklin. Also, Centurion advises that both sample films were photographed by the same cinematographer.

Centurion submits that this person is a major contributing factor to the creative and technical qualities of any film. Therefore, Centurion concludes that technical equality is the only rational result and it should have received the award because of its lower price.

DAVA has given our Office the technical and cost proposals of Franklin and Centurion and the evaluations of these proposals, the greatest value computation worksheets and the evaluation/award memoranda. While not given to Centurion, we have carefully reviewed this material in deciding this protest.

DAVA has documented the considerations upon which the evaluation of RFP-0013 was based. The summary of Centurion's personnel qualifications indicates that while the producer/director did have a very good background, the list of film awards did not include many major awards. The summary also indicates that the cameraman had an impressive list of film credits and film awards. However, the summary indicates that Centurion's editor had only limited experience as an editor. This resulted in Centurion receiving 29 points out of 40 for the qualifications and relevant experience of proposed production team members category. In the creativity category, Centurion's sample film was given a poor rating and Centurion received only 13.3 points out of 35. In the evaluation team's opinion, the film lacked creativity with respect to direction and photography. While the film fared slightly better in the editing and music effects, the overall conclusion was that the editing was slow and the music was distracting. Centurion's score in the technical quality category based on the sample film was 11.7 points out of a possible 25 because, in DAVA's judgment, the film was too long; the editing was sloppy, with several scenes out of synchronization; and the lighting and photography was merely fair. Also, the inclusion of unusable scenes and nonprofessional actors that were just not convincing were noted. Centurion received a total score of 54 points and was considered to be technically unacceptable.

We have held that an agency need not consider an offeror's low price when it submits an unacceptable technical proposal. See Space Age Surveyors, B-199634, November 2, 1980, 80-2 CPD 355. Thus, the question here is whether DAVA properly determined that Centurion's proposal was technically unacceptable.

Further, it is not the function of our Office to evaluate proposals or make our own determination as to their acceptability or relative merits. The determination of the relative merits (scoring) of proposals is the responsibility of the procuring agency, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and such discretion must not be disturbed unless shown to be arbitrary or in violation of procurement statutes and regulations. Industrial Technology Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. Therefore, our Office will not substitute its judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc., Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180.

Our review of DAVA's technical evaluation, in light of Centurion's allegations, does not indicate that the evaluation of Centurion's proposal was improper or arbitrary. To the contrary, it appears that DAVA rated Centurion's proposal on the basis of reasoned judgment and in accordance with the established evaluation criteria. The difference in the total scores received by Centurion under RFP-0013 and RFP-0008 was substantially related to the evaluation of the sample films because the personnel qualifications categories were almost equal (29 points and 30.67 points out of 40, respectively). The evaluation of the sample films, by its nature, is an extremely subjective exercise. The fact that Centurion disagrees with DAVA's judgment does not invalidate it. See Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

This aspect of Centurion's protest is denied.

RFP-0008

In this RFP, the proposal evaluation criteria, the respective weights and the requirement for separate business and technical proposals were the same as set forth under RFP-0013, above. Each proposer was again advised of the "Greatest Value to Government" standard. Although the RFP did not indicate how DAVA would compute the greatest value, it used a technical-score-to-price ratio of 65/35. However, there was one requirement under this RFP that was not included under RFP-0013, i.e., "a special production approach (proposal) for certain sequences in the script." There were no points or weight factors assigned to the latter requirement or, for that matter, to cost.

Centurion's position with respect to the qualification of the production team is the same as argued under RFP-0013. Centurion contends that the sample film submitted with its proposal is at least equal to the film submitted by Franklin.

Centurion believes that since the special production approach requirement was not matched up with another evaluation criterion, the RFP violates OFPP regulations as contained in OFPP Pamphlet No. 3, volume I, chapter IV, page 46. The portion of the OFPP Pamphlet referred to by Centurion provides:

* ** * * In the RFP, you must specifically identify those things (resumes, samples, and the like) that technical evaluators will need in order to judge each offeror's proposal in terms of the stated evaluation criteria. However, you should not require offerors to spend time and money preparing and submitting things that are not necessary. The best way to ensure that the evaluators will get enough, but not too much, information is to identify each item they intend to require with the evaluation criterion it supports. (For example, resumes are associated with a personnel qualifications criterion; samples are associated with technical quality or creativity criteria.) If

any required item does not match up with a criterion, it should be deleted. * * *

In addition, Centurion contends that both it and Franklin submitted, with one exception, similar production techniques for filming the designated scenes. The exception was in Franklin's description of how it would execute a certain scene, i.e., quick cut vs. soft cut. Centurion believes that since Franklin did not indicate the quick cut method, it did not follow the script exactly and, therefore, Franklin's approach was not responsive to the RFP's listed requirements.

Centurion also questions DAVA's evaluation of its pricing proposal. It is Centurion's belief that its price was realistic and its proposal did not reveal an underestimate of the requirements. Centurion argues that DAVA had a duty to conduct discussions, rather than taking its proposal at face value. The difference in Centurion's price (\$62,630) and Franklin's (\$109,855) is also raised to show the award was unfair and without any rational basis.

With respect to DAVA's use of a 65/35 technical-to-price ratio, Centurion submits that failure to state this in the RFP violated OFPP regulations (OFPP Pamphlet No. 3, volume I, chapter I, page 11), which provides, in pertinent part:

"* * * Determine the relative importance of price. Normally, because the quality of productions is important, the technical evaluation criteria should predominate. However, if you need simply acceptable technical quality or if funds are especially tight, price could become more critical. There is no 'right' place for price in your list of criteria - it all depends on the particular requirement. Use your judgment."

DAVA's documentation shows that Centurion received 76.66 points out of 100 points under the initial technical evaluation. Essentially, DAVA found Centurion well qualified concerning qualifications, experience and the sample film. However, the summary evaluation

noted some technical problems, for example, lighting was not balanced, interior scenes badly exposed, some acting overplayed, pace of film was too slow and ran too long. These problems notwithstanding, DAVA concluded that the "film was probably effective in its overall objective of psychological limitation." Centurion's proposal was then evaluated, using the 65/35 ratio, above, to determine its value to the Government. DAVA awarded a 84.8 score.

However, during the next phase of the evaluation process, DAVA found Centurion to be technically unacceptable because Centurion's pricing proposal "contained omissions and deficiencies which would compromise or otherwise detract from the quality, creativity and overall production efficiency of the project." DAVA found that Centurion's proposal did not provide for magnetic (mixed) sound track nor any costs for the producer. DAVA submits that the proposal did not list sufficient time for the director if his duties were expanded to include those of the producer and DAVA doubts that the low overhead could absorb this deficiency. Also, there was no cost allotted to the cameraman or electrician, which DAVA believes could be absorbed by the low overhead. In other areas, DAVA also found numerous deficiencies. DAVA determined that the deficiencies and omissions contained in Centurion's proposal and the low overhead and profit rates rendered the overall proposal deficient. Award was made on the basis of initial proposals.

As stated above, it is not our Office's function to make determinations as to the acceptability or relative merits of technical proposals. Rather, we will examine the record and determine whether the judgment of the contracting agency was clearly without a reasonable basis. Unless such a finding is made, or there is an abuse of discretion or a violation of procurement statutes or regulations, that judgment will not be disturbed. See Industrial Technology Associates, Inc., supra.

Based upon our review of DAVA's technical evaluation for RFP-0008, we cannot say it was unreasonable. The difference in points given to Franklin and Centurion was mainly in the evaluation of the sample

films. While Franklin's technical score was greater than Centurion's score, both were placed in the initial competitive range. DAVA's evaluation of both proposals was reasonable and in accordance with the established criteria. The fact that Centurion's sample film was the same film submitted to enable Centurion to be placed on the QFPL does not alter our conclusion. It is clear that both evaluations of the film were favorable and apparently consistent, since one resulted in Centurion's placement on the QFPL and the other resulted in an initial finding of technical acceptability.

In regard to DAVA's use of the special production approach, DAVA's position is that the use of the approach was necessary to determine "whether * * * an offeror understood the intent of the script regarding the construction scenes." We believe that DAVA could have explained the use of the requirement more fully in the RFP. Nevertheless, since both Franklin and Centurion submitted acceptable approaches and no points were added or subtracted, we cannot conclude that Centurion was prejudiced by this requirement.

This requirement, contrary to Centurion's argument, does not violate the OFPP Pamphlet provision set forth above, which cautions contracting agencies against requesting unnecessary material. While it is true that OFPP Pamphlet No. 3 does require that the contracting agencies use the documents contained in volume II (Key Documents) of the Pamphlet, it allows agencies flexibility in creating the evaluation plan from the framework provided.

Specifically, the Pamphlet, at page 10, provides three mandatory technical evaluation criteria to be included in solicitations, which were the three utilized by DAVA. Once the technical proposal requirements and evaluation plan are drafted, the agency then decides what material will be needed to judge each proposal in terms of the stated technical evaluation criteria. The material, in this case the special production approach, should, at this point, be related to one of the three evaluation criteria. It seems logical that the special production approach could have been related to the creativity criteria category, which is not limited to the sample film. See OFPP Pamphlet No. 3, volume I, chapter IV, page 46, cited above. This would have given

each offeror a clearer understanding of how the requested material was to be used by the agency.

With respect to DAVA's evaluation of Centurion's pricing proposal, we believe that the record supports DAVA's actions. As noted above, the deficiencies found in the cost proposal indicated that Centurion did not meet the minimum requirements to produce the subject film. In light of the deficiencies and omissions, DAVA had doubts concerning Centurion's performance and determined Centurion to be technically unacceptable. It is well settled that an offeror must demonstrate affirmatively the merits of its proposal and it runs the risk of proposal rejection if it fails to do so clearly. See Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15. When a procurement is negotiated and a cost or price proposal is one segment of an overall proposal containing technical and/or other sections, the cost or price proposal may be considered in its evaluating the offeror's understanding of the scope of work required by the technical or other segments of the solicitation. See Electronic Communications, Inc., supra; Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10. We find that DAVA's use of the cost proposal was proper and based on reasoned judgment.

Centurion's attempt, during its protest, to explain its cost proposal cannot be considered. Any needed explanation should have been included with its cost proposal and submitted to DAVA.

Centurion's assertion that if DAVA had any questions concerning its cost proposal, DAVA had the duty to conduct discussions in order to request the answers from Centurion is also rejected because the RFP advised offerors that award be made based on initial proposals without discussions. See Standard Form 33-A, Solicitation Instructions and Conditions, paragraph 10(g), and GMS Gesellschaft Fuer Metallverarbeitung mbH. & Co., B-197855, January 6, 1981, 81-1 CPD 4. Here, the record supports the existence of adequate competition and award at a fair and reasonable price.

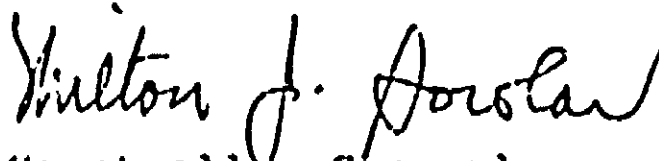
Centurion's argument, that the use of a 65/35 technical-to-price ratio violates the OFPP Pamphlet, which provides that if funds are tight or the need

is simply acceptable technical quality, cost could become more important, is without merit. The Pamphlet, in this instance, merely gives the agency discretion in determining the importance of price. It does not specify what value an agency should place on price. Rather, it leaves open where in the list of criteria price should be inserted. The agency is told to use its judgment and make sure the value of price is based on the particular requirement.

In any event, even using this ratio, Centurion was not prejudiced because its proposal was placed in the initial competitive range and the reason for its rejection was not based on the ratio, but on the evaluation, of its cost proposal.

Finally, Centurion argues that each RFP failed to give the relative evaluation weights of the price and technical factors and to explain how each would be used to evaluate the proposal. We find this argument untimely. Since the alleged impropriety was apparent prior to the closing date for receipt of proposals and was raised thereafter, it is untimely under section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1981), and is dismissed. See Monaco Enterprises, Inc., B-204418, February 16, 1982, 82-1 CPD ____.

Centurion's protest is dismissed in part and denied in part.


for Comptroller General
of the United States